

1 James Alan Bush  
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3 San Jose, CA 95118  
4 (408) 982-3272

5 Plaintiff in pro per  
6  
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JUN 25 2008

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

C-128  
11  
12  
13 James Alan Bush, ) Case No.: C 08-01354 (RS) JF  
14 )  
15 Petitioner, ) EXHIBIT D  
16 )  
17 v. ) PETITION FOR CLAIM AND DELIVERY  
18 )  
19 Kathy Bickel, )  
20 )  
21 Respondent. ) Magistrate Judge Richard Seeborg  
22 )  
23 \_\_\_\_\_ )  
24  
25  
26

20 EXHIBIT D

21 Plaintiff hereby submits Exhibit "D", a petition for claim and  
22 delivery, seeking the return of property belonging to the plaintiff,  
23 which is being unlawfully detained by Defendant, Kathy Bickel. The  
24 property contains evidence intended for use in trial of this case:  
25  
26

**INTRODUCTION**

COMES NOW, James Alan Bush, Petitioner in the above-entitled matter, and brings his cause of action for claim and delivery, pursuant to California Code of Civil Procedure § 511.010 et seq., against, Respondent, Kathy Bickel, who lawfully acquired, but failed to return on demand, Petitioner's property.

It seeks to recover damages for the detention of Petitioner's property, pursuant to Code Civ. Proc. §§ 627 and 667; and, for all the detriment proximately caused by the loss of its use, pursuant to Civ. Code § 3333; and, exemplary damages, pursuant Civ. Code § 3294.

**PARTIES**

1. Petitioner is, and at all relevant times was, a resident of the City of San Jose or the City of Sunnyvale, County of Santa Clara, State of California.
2. Respondent, Kathy Bickel, now is, and at all times relevant to this action was, a resident of the City of Greenwood, County of Johnson, State of Indiana, residing at 1256 Blakely Drive.

**FACTUAL ALLEGATIONS**

3. At all times herein mentioned, Petitioner was, and still is, entitled to the possession of the following property:
  - Apple Powermac G4 (Part No. M8841LL/A) (Serial No. XB3110ARN1Y) The purchase receipt is attached hereto as Exhibit "A" and made a part hereof.
  - 1 GB DDR 333 PC2700 SO-DIMM (Part No. M9594G/A) The purchase receipt

1 is attached hereto as Exhibit "B" and made a part hereof.

2 • DVDs, containing audio recordings and electronic documents intended  
3 to be submitted as evidence in a pending civil matter.

4 • A Sony hand-held digital recorder, which contained audio recordings  
5 intended to be submitted as evidence in a pending civil matter.

6 4. On or about August 15<sup>th</sup>, 2006, the above-mentioned property had a  
7 combined value of \$3,500.

8 5. Petitioner is, and at all times herein mentioned was, entitled to  
9 the immediate and exclusive possession of the personal property  
10 described above.

11 6. On or about October 15<sup>th</sup>, 2006, Petitioner demanded the  
12 immediate return of the above-mentioned property; but,  
13 Respondent, Kathy Bickel, failed and refused, and continues to fail  
14 and refuse, to return the property to the petitioner.

15 7. Respondent's act of failing to return the personal property of the  
16 petitioner is an act of willful interference with that property,  
17 done without lawful justification, by which Petitioner, the person  
18 entitled to the property, is deprived of its use and possession.

19 8. The aforementioned act of the Respondent was willful, wanton,  
20 malicious, and oppressive, was undertaken with the intent to  
21 retaliate for the exercise of the petitioner's constitutional right  
22 to seek to redress grievances in court, and justify the awarding of  
23 exemplary and punitive damages in the amount of \$7,500.

24  
25 **DAMAGES**

26 9. During, and as a proximate result of, Respondent's failure and

1 refusal to return the property described herein, Petitioner  
2 suffered the loss of the use and enjoyment of said personal  
3 property.

4 10. Respondent's refusal to return the property described herein  
5 constitutes interference with Petitioner's civil rights, which  
6 is cognizable under Title 42 U.S.C.S. § 1983, in that Respondent  
7 is withholding property she knew at the time of the taking was  
8 intended to be used by the petitioner as evidence in a matter now  
9 pending in the United States District Court, District of Northern  
10 California, San Jose Division, Case No. C 08-01345.

11 11. Accordingly, Petitioner seeks damages in the amount of value of  
12 the property, and, the Petitioner also seeks damages for all the  
13 detriment proximately caused by the loss of use of the property,  
14 in the form of interest; and, Petitioner seeks exemplary damages,  
15 pursuant to Civ. Code § 3294, as Petitioner's federal civil matter  
16 is prejudiced by the withholding of evidence by the respondent.

17  
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner prays judgment against Respondent, as follows:

- 20 • An injunction ordering the return of the property described herein,  
21 pursuant to Civ. Code § 3379 and Code Civ. Proc. §§ 511.010-516.050;  
22 • For the value of the property converted in the sum of \$3,399,  
23 pursuant to Code Civ. Proc. §§ 627 and 667;  
24 • For interest at the legal rate on the foregoing sum, pursuant to  
25 Civ. Code § 3336, from and after August 15<sup>th</sup>, 2006;  
26 • For exemplary damages in the amount of \$7,500, or according to

proof, in consideration of Respondent's personal animus towards Plaintiff and the length of time Respondent has detained the claimed property, pursuant to Civ. Code § 3294.

- For such other and further relief as the court may deem proper, including damages for the proximate and foreseeable loss resulting from Respondent's unlawful detention.

#### VERIFICATION

I, James Alan Bush, Petitioner in the above-entitled action, have read the foregoing and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief; and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Jose, California.

Plaintiff: \_\_\_\_\_

Dated: \_\_\_\_\_

#### CERTIFICATE OF SERVICE

A copy of the above notice of motion was mailed by certified mail, return receipt requested, to Respondent, Kathy Bickel, on June 5<sup>th</sup>, 2008.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_